

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





# 76-7332

In The  
UNITED STATES COURT OF APPEALS  
For the Second Circuit

DOCKET NO. 76-7332

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED,

Plaintiff-Appellant,

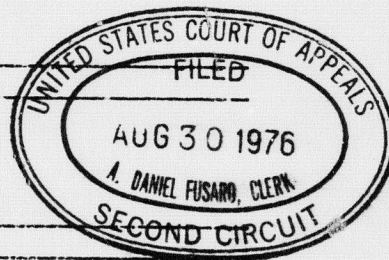
against

COSTA LECOPULOS, a/k/a CONSTANTINOS LEKOPOULOS

Defendant-Appellee.

On Appeal From The United States District Court For  
The Southern District of New York

JOINT APPENDIX



BROWN, WOOD, IVEY, MITCHELL & PETTY  
Attorneys for Plaintiff-Appellant  
One Liberty Plaza  
New York, New York 10006  
(212) 349-7500

WEISS, DAWID, FROSS & LEHRMAN  
Attorneys for Defendant-Appellee  
880 Third Avenue  
New York, New York 10022  
(212) 826-0770



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8/30/76



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DISTRICT	YR.	NUMBER	MO.	DAY	YEAR	N/S	O	H	23	\$	OTHER	NUMBER	DEM.	YR.	NUMBER
208-1	75	1622	04	02	75	4	190	2	24		105	0843		75	1622

## PLAINTIFFS

MERRILL, LYNCH, PIERCE, FENNER &amp; SMITH INCORP.

## DEFENDANTS

COSTA LEKOPOULOS, A/K/A  
CONSTANTINE LEKOPOULOS

CANNELLA,

J.N.

BREACH OF CONTRACT.

CAUSE

## ATTORNEYS

BROWN, WOOD, FULLER, CALDWELL & IVY.  
ONE LIBERTY PLAZA  
NEW YORK, N.Y. 10006WEISS, DAVID, FROSS & LEHMAN  
880 THIRD AVENUE,  
NEW YORK CITY, N.Y. 10022  
826- 0770

1a.

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	APR 2 1975	49374		JS-5	<input checked="" type="checkbox"/>
				JS-6	<input checked="" type="checkbox"/>



DATE	NR.	PROCEEDINGS	CANNELLA, J.
04-02-75	1	Filed Petition for Removal from Supreme Court State & County of New York.	
04-02-75	2	Filed Undertaking for Removal in the sum of \$500.00, National Surety Company.	
04-17-75	3	Filed deft's notice of taking deposition of plttf. by its officers, agents and employees named as indicated on the dates indicated.	
04-17-75	4	Filed deft's first request to produce documents.	
04-28-75	5	Filed plttf's affdvt. of Francis X. Falmerny and notice of motion for an order to stay action, compel arbitration and obtain a protective order. Ret. 05-02-75	
04-28-75	6	Filed memorandum of law in support of plttf's motion to stay this action, compel arbitration and obtain a protective order.	
05-01-75	7	Filed stip & order extending deft's time to answer to the complaint from 05-05-75 to 06-16-75 and as indicated. So ordered- CANNELLA, J.	
06-17-75	8	Filed stip & order extending deft's time to answer to the complaint from 06-16-75 to 08-18-75-- the return date of plttf's motion to stay, etc. is postponed from 06-16-75 to 08-18-75., and as indicated. So ordered- CANNELLA, J.	
08-18-75	9	Filed stip & order extending deft's time to answer to the complaint from 08-18-75 to 09-12-75- the return date of plttf's motion to stay this action, compel arbitration and obtain a protective order is postponed from 08-18-75 to 09-12-75, etc. as indicated. So ordered- CANNELLA, J.	
09-15-75	10	Filed Defts Affidavit and Notice of Motion for an order to dismiss complaint on lack of jurisdiction. Ret. 09-22-75.	
09-15-75	11	Filed Defts Memorandum of Law in support of deft's motion to dismiss for want of personal jurisdiction over deft and in opposition to motion to compel arbitration.	
09-15-75	12	Filed Defts Reply Affidavit in opposition to plttf's motion to stay these proceedings, compel arbitration and for a protective order by Peter Weiss.	
09-17-75	13	Filed Stip and Order postponing plttf's motion to stay this action, compel arbitration & obtain a protective order to 09-12-75 to 09-22-75, it being understood that deft will make its motion to dismiss returnable on the same date. So Ordered. CANNELLA, J	
09-22-75	14	Filed Stip and Order adjourning plttf's motion to stay action etc. & deft's motion to dismiss action for lack of personal jurisdiction to 10-27-75. So Ordered. CANNELLA, J	
10-22-75	15	Filed plttf's memorandum of law in opposition to deft's motion to dismiss and in support of plttf's motion to stay the action, compel arbitration and obtain a protective order.	
10-22-75	16	Filed plttf's affdvt. of Jeronimo Villaiba.	
10-22-75	17	Filed plttf's affdvt. of Marc Sibony.	
11-07-75	18	Filed Deft's Reply Memorandum of Law in support of deft's motion to dismiss for want of personal jurisdiction and in opposition to motion to compel arbitration.	
11-07-75	19	Filed Deft's Reply Affidavit.	
6-08-76	(20)	Filed Memorandum Decision and Order- Opinion # 44543-- for the reasons stated, deft's motion to dismiss for lack of personal jurisdiction is hereby granted and the complaint dismissed. So ordered- CANNELLA, J. (m/n)	
06-08-76--		Filed memo endorsed on document #5-- The within motion is rendered moot by the Court's determination of deft's motion to dismiss. So ordered- CANNELLA, J. (m/n)	
07-07-76		Filed NOTICE OF APPEAL of Plttf to USCA 2nd Cir. from the judgment dismissing the complaint in this action for lack of personal jurisdiction over deft on 6-8-76. m-n to attys for deft. Weiss, David, Fross & Lehrman, 880 Third Ave. NYC 10022.	
07-16-76		Filed notice that the record on appeal has been certified and transmitted to USCA on this day.	



ORDER OF ATTACHMENT

At a Special Term, Part II  
of the Supreme Court  
of the State of New  
York, held in and for  
the County of New York,  
at the County  
Courthouse, 60 Centre  
Street, New York,  
New York on the 6<sup>th</sup>  
day of January, 1975.

P R E S E N T :

HON. *Chinista*

Justice

-----x  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED,

Plaintiff, :

- against -

COSTA LECOPULOS, a/k/a  
CONSTANTINOS LEKOPOULOS,

Defendant.  
-----x

ORDER OF ATTACHMENT

INDEX NO.

60206/75

A motion having been made by the plaintiff for an Order  
of Attachment against the property of the defendant in an  
action in the Supreme Court, New York County,

NOW, on reading and filing the summons and verified  
complaint herein, the affidavit of Francis X. Flannery, duly  
sworn to the 6th day of January, 1975 and the exhibits an-  
nexed thereto wherein it appears that a cause of action for  
a money judgment exists in favor of the plaintiff and  
against the defendant for the sum stated in the affidavit,  
namely one hundred five thousand, eight hundred forty six  
and 01/100 dollars (\$105,846.01) with interest thereon from



ORDER OF ATTACHMENT

the 20th day of December, 1974 and that the plaintiff is entitled to recover said sum above all counterclaims known to it;

AND, it being further shown by said affidavit that the plaintiff is entitled to an Order of Attachment against the property of the defendant on the ground that said defendant is not a resident or domiciliary of the State of New York, and the undertaking required by law having been submitted herewith;

NOW, on motion of Brown, Wood, Fuller, Caldwell and Ivey, attorneys for the plaintiff it is,

ORDERED, that the plaintiff's undertaking be and the same hereby is fixed in the sum of \$10,500. —, of which amount the sum of \$5300. — thereof is conditioned that the plaintiff will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the said defendant recovers judgment or it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and the balance thereof in the amount of \$5300. — conditioned that the plaintiff will pay to the Sheriff all of his allowable fees, and it is further

ORDERED, that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, levy, within his jurisdiction, at any time before final judgment, upon such property in which said defendant, Costa Lecopulos, a/k/a Constantinos Lekopoulos, has an interest, including, but

ORDER OF ATTACHMENT

not limited to, any beneficial interest which said defendant may have in any corporations, partnerships, sole proprietorships, joint ventures or other businesses, and upon such debts owing to said defendant as will satisfy the plaintiff's demand of \$105,846.01 together with probable interest and costs and the Sheriff's fees and expenses, and that he proceed hereon in the manner required by law.

ENTER

*1014000  
103846*

*J. Chimera*  
\_\_\_\_\_  
J.S.C.



AFFIDAVIT OF FRANCIS X. FLANNERY IN SUPPORT  
OF APPLICATION FOR ATTACHMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED, : AFFIDAVIT IN SUPPORT  
Plaintiff, : OF APPLICATION FOR  
ATTACHMENT  
- against - : INDEX NO.  
COSTA LECOPULOS, a/k/a :  
CONSTANTINOS LEKOPOULOS, :  
Defendant. :  
-----x

STATE OF NEW YORK )  
: ss:  
COUNTY OF NEW YORK )

FRANCIS X. FLANNERY, being duly sworn, deposes and  
says:

1. I am an attorney in the Law Department of Merrill  
Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch")  
the plaintiff in this action and I make this affidavit in  
support of plaintiff's application pursuant to CPLR § 6201  
et seq. for the issuance of an Order of Attachment against  
the property of the defendant Costa Lecopulos, a/k/a,  
Constantinos Lekopoulos. This affidavit is based, except  
where otherwise indicated herein, upon information and  
belief. The sources of the information upon which I base  
this affidavit are the records of the plaintiff annexed  
hereto, which are maintained in the ordinary course of  
plaintiff's business.



AFFIDAVIT OF FRANCIS X. FLANNERY IN SUPPORT  
OF APPLICATION FOR ATTACHMENT

2. For the reasons stated below, and in the verified complaint annexed hereto as Exhibit A, the plaintiff is about to commence an action against the defendant, a Greek national residing in Greece, to recover the sum of \$105,846.01 with interest from December 20, 1974, and the costs and disbursements of this action, which sum is the unsecured debit balance in defendant's commodities account number 110-21132 with Merrill Lynch.

3. On or about May 11, 1974 said defendant opened said account number 110-21132 with Merrill Lynch for the purpose of trading in commodities on exchanges within the State of New York, elsewhere in the United States and throughout the world. On that occasion, he gave his residence address to the plaintiff as Dukissis Plakentias, 18/20, Ampelokipi, Athens, Greece and his business address as 24 Kallirois Street, Vourvachi, Athens, Greece and he further stated that he was a citizen of Greece. A copy of the New Account Information form of Merrill Lynch embodying this information is annexed hereto as Exhibit B.

4. The plaintiff purchased and sold various commodity futures contracts at the defendant's order and for the defendant's account and risk during the months of November and December, 1974. Copies of the monthly statement of defendant's account for the month of November, 1974, together with Merrill Lynch's Commodity Account Profile for defendant's account for the month of December 1974, showing all transactions in said account during said months, are annexed hereto as Exhibit C.



AFFIDAVIT OF FRANCIS X. FLANNERY IN SUPPORT  
OF APPLICATION FOR ATTACHMENT

5. As a result of said transactions, the defendant owes the plaintiff the sum of \$105,846.01, over and above all counterclaims known to the plaintiff, no part of which has been paid despite plaintiff's demand therefor. A copy of a statement derived from the above-mentioned monthly statements and Commodity Account Profile by the plaintiff's Commodity Account Department showing an unsecured debit balance in defendant's account of \$105,846.01 is annexed hereto as Exhibit D.

6. No previous application for a writ of attachment or any other provisional remedy has been made in this action.

Francis X. Flannery  
FRANCIS X. FLANNERY

Sworn to before me this  
6th day of January, 1975

Thomas J. Mullaney  
Notary Public

THOMAS J. MULLANEY  
Notary Public, State of New York  
No. 30-6332355  
Qualified in Nassau County  
Cert. Filed in New York County  
Commission Expires March 30, 1978

SUMMONS

C 104 Summons without Notice, Blank Court 4-64.  
Personal or Substituted Service.

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated,

Plaintiff

against

Costa Lecopulos, a/k/a,  
Constantinos Lekopoulos,

Defendant

Index No.

Plaintiff designates

New York  
County as the place of trial

The basis of the venue is

Plaintiff's residence

Summons

Plaintiff resides at

One Liberty Plaza

County of New York, New York

To the above named Defendant

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, January 6, 1975

BROWN, WOOD, FULLER, CALDWELL & IVEY  
Attorney(s) for Plaintiff

Office and Post Office Address

One Liberty Plaza

New York, New York 10006



SUMMONS

C 104 Summons without Notice, Blank Court 4-64.  
Personal or Substituted Service.

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated,

*Plaintiff*

*against*

Costa Lecopulos, a/k/a,  
Constantinos Lekopoulos,

*Defendant*

*Index No.*

*Plaintiff designates*

New York  
County as the place of trial

*The basis of the venue is*

Plaintiff's residence

**Summons**

*Plaintiff resides at*

One Liberty Plaza

County of New York, New York

To the above named Defendant

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within        days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, January 6, 1975

BROWN, WOOD, FULLER, CALDWELL & IVE  
Attorney(s) for Plaintiff

Office and Post Office Address

One Liberty Plaza

New York, New York 10006

**BEST COPY AVAILABLE**



VERIFIED COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED, :

Plaintiff, :

VERIFIED COMPLAINT

- against - :

INDEX NO.

COSTA LECOPULOS, a/k/a, :  
CONSTANTINOS LEKOPOULOS, :

Defendant. :

-----x  
The plaintiff, MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED ("Merrill Lynch") by its attorneys Brown, Wood,  
Fuller, Caldwell & Ivey, complaining of the defendant,  
alleges as follows:

1. The plaintiff is a Delaware corporation, licensed  
to do business and doing business in the State of New York  
as a broker-dealer in securities and commodities, with an  
office and principal place of business at One Liberty Plaza,  
New York, New York 10006.

2. Upon information and belief the defendant is a  
Greek national, residing at Dukissis Plakentias, 18/20  
Ampelokipi, Athens, Greece.

3. On or about May 11, 1974, the defendant opened an  
account No. 110-21132 with Merrill Lynch for the purpose of  
purchasing and selling commodities futures contracts through  
Merrill Lynch within the State of New York and at other  
locations in the United States and throughout the world.



VERIFIED COMPLAINT

4. On various occasions in the months of November and December 1974, the defendant ordered the plaintiff to purchase and sell various commodity futures contracts as his agent and for his account and risk, which orders were executed by Merrill Lynch. A list of said transactions is contained in the monthly statements of defendant's account No. 110-21132 for the month of November, 1974 and in Merrill Lynch's Commodity Account Profile for said account for the month of December 1974, which documents are annexed hereto as Exhibit A and made a part hereof.

5. As a result of said transactions there is due and owing by the defendant to the plaintiff as of December 20, 1974, the sum of \$105,846.01, no part of which has been paid despite plaintiff's demand therefor.

WHEREFORE, the plaintiff demands judgment against the defendant in the amount of \$105,846.01 together with interest from December 20, 1974 and the costs and disbursements of this action.

DATED: New York, New York  
January 6, 1975

BROWN, WOOD, FULLER, CALDWELL &  
IVEY  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, New York 10006  
(212) 349-7500

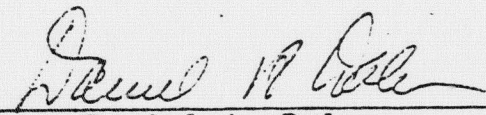


VERIFIED COMPLAINT

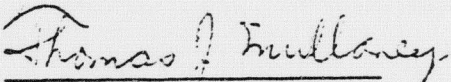
STATE OF NEW YORK )  
: ss:  
COUNTY OF NEW YORK )

DANIEL A. DOLAN, being duly sworn, deposes and says:

Deponent is a Vice President of Merrill Lynch, Pierce, Fenner & Smith Incorporated, the plaintiff in the within action, that he has read the foregoing complaint and knows the contents thereof, that the same are true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true. The grounds for deponent's belief are the business records of the plaintiff annexed hereto as exhibits.

  
Daniel A. Dolan

Sworn to before me  
this 2<sup>nd</sup> day of  
January, 1975

  
Notary Public

THOMAS J. MULLANEY  
Notary Public, State of New York  
No. 33-3832355  
Qualified in Nassau County  
Cert. Filed in New York County  
Commission Expires March 30, 1976



NEW ACCOUNT FORM (EXHIBIT B TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)

REV. 10/72  
U.S.A.

NEW ACCOUNT INFORMATION  
FOR COMMODITY SPECULATIVE ACCOUNTS

STENCIL HERE 110-21132

FOR NEW ACCOUNTS DEPARTMENT ONLY		
Rcvd.	Check Off Nec- essary Papers	Follow- ing Up
	CODE 86	
	CODE 94	
	CODE 688	
	CODE 117	
	CHARTER	
	EMPLOYER LTR	
NOV 27 1974		
NA 13-NA		
N/A CLERK STAMP		

Cmdy. 110-21132  
Acct. No. 110-21132  
Date Cmdy. 5/11/74  
Acct. Opened 5/11/74  
Business Phone 922 2296  
Residence Phone 692 4583  
Taxpayer Ident. No.  
Soc. Sec.-Corp. Ident.  
Passbook  
Alien Reg. No.

000 00 0000 4162, 110-21132  
MR COSTA LECOPULOS  
24 LLIROIS  
VOURVACHI  
ATHENS  
GRECE

NEW CLIENT: Yes ☒ No ☐ Married ☒ Single ☐ No. of Dependents 1 GIRL

IS CLIENT OVER 21 YEARS OF AGE: Yes ☒ No ☐

HOW LONG HAVE YOU KNOWN CLIENT 2 WEEKS

OF WHAT COUNTRY IS CLIENT A CITIZEN GREECE

SOURCE OF ACCOUNT: Direct Mail Lead ☐ Advertising Lead ☐ Forum Lead ☐

Personal Call ☐ Other REFERRAL FROM A. ALEXIOU

BUSINESS STRUCTURE  
(If Applicable)  
SOLE ☐  
PROPRIETORSHIP ☐  
PARTNERSHIP ☐  
CORPORATION ☐

Name CONSTANTINOS LEKOPoulos  
IF CLIENT IS MARRIED, SHOW SPOUSE'S EMPLOYER AND OCCUPATION UNDER "OTHER COMMENTS" BELOW.  
Mailing Address 24, KALLIROIS STREET, MAKRYANNI - ATHENS, GREECE  
Home Address DUKISSIS PLAKENTIAS, 18/20, AMPELOKIPi, ATHENS.  
IF SAME AS MAILING ADDRESS, WRITE SAME.  
Employed By FLEYIA NAVLERIA CIA. S.A. Address 24, KALLIROIS STREET, ATHENS.  
Nature of Business SHIPPING. Position Held OWNER



NEW ACCOUNT FORM (EXHIBIT B TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)

Has Client Ever Done Business With Another Broker Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Has Client Done Commodity Business With Another	
Name of Broker <u>BACHE INC. IN GENEVA</u>		MLPF&S Office Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Current Stock And Commodity Equity At Other Broker \$ <u>1,500,000</u>		Office At _____	
If Power of Attorney In Whose Favor <u>MRS KATINA LEKOPOULOU</u> (FULL NAME AND CMDOY. ACCT. NO. IF ANY)		PREVIOUS CMDOY. ACCT. NO. _____	
Relationship To Customer <u>WIFE</u>			
Related Cmdy. Accts. (If None - State None) _____		And Other Comments <u>4152/7428</u>	
Bank Reference And Branch Location <u>DISCOUNT BANK, GENEVA</u> <u>BANK OF ATTICA, PIRAEUS, GREECE</u>		SIGNATURE OF ACCOUNT EXECUTIVE OPENING ACCOUNT <u>[Signature]</u>	
TO BE COMPLETED ON ALL SPECULATIVE ACCOUNTS BY OFFICE MANAGER - EVERY QUESTION MUST BE ANSWERED			
Is Client Experienced in Futures Speculation <u>YES</u>		Estimate of Customer's ANNUAL INCOME \$ <u>400,000</u>	
Estimated NET WORTH (Exclusive of Equity in Home) \$ <u>3,000,000</u>			
Current Equity in Client's Merrill Lynch Security Accts. \$ _____		and M.L. Cmdy. Accts. \$ _____	
Client's Merrill Lynch Security Account Numbers <u>40-21133</u>			
Estimated Risk Capital Available For Commodity Trading \$ <u>400,000</u> <u>BANK OF ATTICA IN PIRAEUS</u>		How Did You Determine Customer's Estimated Financial Position <u>[Signature]</u>	
Suggested DOLLAR TRADING LIMIT (Maximum Margin Requirements At Any One Time) Based On Your Estimate Of Client's Financial Situation and Temperament \$ <u>600,000</u> , (Subject to Periodic Review). Have You Advised A/E Accordingly <u>YES</u> .			
Are You Satisfied That This Customer is a Desirable Speculative Commodity Account <u>YES</u> .			
Has Anyone Discussed Risk of Commodity Trading With Customer <u>YES</u> If So, Who <u>JERRY VILLALBA</u>			
DATE <u>5/11/74</u>	APPROVED (Office Manager) <u>[Signature]</u>	REVIEWED BY (Commodity Division) _____	ACCEPTED BY (Commodity Division) <u>[Signature]</u>

NEW ACCOUNTS COPY N.Y. #1

7428

MR COSTA LECOPULOS  
24 KALLIROIS STREET  
YOURVACHI  
ATHENS GREECE 00000

UNREGULATED

Francis X. Flannery  
Francis X. Flannery Inc.

## STATEMENT OF COMMODITY ACCOUNT

1 11/29/74 110-21132  
PAGE DATE ACCOUNT NO

Please advise your broker immediately of any  
discrepancies when making entries please mention the  
account number and trading all correspondence to the office  
covering your account. Please keep this statement for your records.  
For description of symbols and other matters see section 10b.

MONTHLY STATEMENTS (EXHIBIT C TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)

DATE	BOUGHT	SOLD	DESCRIPTION	MT	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO DAY YR										
10 29 74			U.S. FDS OPENING BALANCE					.00		
11 08 74	16		SEP 75 SUGAR 11	COF		5089				
11 08 74	24		SEP 75 SUGAR 11	COF		5089				
11 12 74			DEPOSIT						500000.00	336
11 13 74		1	SEP 75 SUGAR 11	COF		5070				
11 13 74			1 SEP 75 SUGAR 11	PBS				277.30		
11 13 74	3		DEC 74 SUGAR	LDN		61500				
11 13 74	7		DEC 74 SUGAR	LDN		61400				
11 14 74		1	SEP 75 SUGAR 11	COF		4890				
11 14 74		15	SEP 75 SUGAR 11	COF		4860				
11 14 74		15	SEP 75 SUGAR 11	COF		4860				
11 14 74		8	SEP 75 SUGAR 11	COF		4860				
11 14 74			39 SEP 75 SUGAR 11	PBS				102013.10		
11 14 74		7	DEC 74 SUGAR	LDN		56000				
11 14 74		1	DEC 74 SUGAR	LDN		56000				
11 14 74		2	DEC 74 SUGAR	LDN		56200				
11 14 74			10 DEC 74 SUGAR	PBS				63117.80		
11 15 74	3		MAR 75 SUGAR 11	COF		5810				
11 15 74	7		MAR 75 SUGAR 11	COF		5840				
11 15 74	10		MAR 75 SUGAR 11	COF		5900				
11 15 74		20	MAR 75 SUGAR 11	COF		5920				
11 15 74			20 MAR 75 SUGAR 11	PBS					10968.00	
11 15 74		3	MAY 75 SUGAR 11	COF		5750				
11 15 74		17	MAY 75 SUGAR 11	COF		5740				
11 15 74			MAY 75 SUGAR 11	COF		5680				
11 15 74	10		MAY 75 SUGAR 11	COF		5650				
11 15 74	10		MAY 75 SUGAR 11	COF						

15a.

7428

MR COSTA LECOPULOS

UNREGULATED

Francis X. Flannery

2 11/29/74 110-21132  
PAGE DATE ACCOUNT NO



7428

MR COSTA LECOPULOS

UNREGULATED



Harris Lynch  
Pierce  
Fennell & Smith Inc.

2 11/29/74 110-21132  
PAGE DATE ACCOUNT NO

Please advise after receipt of statement of any discrepancies. After receipt of statement, please return the statement to the office of originator. Please advise of any discrepancies in the statement. Please advise of any discrepancies in the statement. Please advise of any discrepancies in the statement.

## STATEMENT OF COMMODITY ACCOUNT

DATE	MO	DAY	YR	BOUGHT	SOLD	DESCRIPTION	MT	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
11 15 74	11	15	74			20 MAY 75 SUGAR 11		PBS				15896.00	
11 15 74	11	15	74		11	JUL 75 SUGAR 11		COF	5430				
11 15 74	11	15	74	1		JUL 75 SUGAR 11		COF	5390				
11 15 74	11	15	74	5		JUL 75 SUGAR 11		COF	5365				
11 15 74	11	15	74		6	JUL 75 SUGAR 11		COF	5400				
11 15 74	11	15	74	9		JUL 75 SUGAR 11		COF	5395				
11 15 74	11	15	74	2		JUL 75 SUGAR 11		COF	5355				
11 15 74	11	15	74		3	JUL 75 SUGAR 11		COF	5410				
11 15 74	11	15	74	3		JUL 75 SUGAR 11		COF	5360				
11 15 74	11	15	74			20 JUL 75 SUGAR 11		PBS				7720.00	
11 15 74	11	15	74	20		MAR 75 SUGAR		LDN	57800				
11 15 74	11	15	74		3	MAR 75 SUGAR		LDN	59800				
11 15 74	11	15	74		17	MAR 75 SUGAR		LDN	59400				
11 15 74	11	15	74			20 MAR 75 SUGAR		PBS				37754.88	
11 15 74	11	15	74	4		SEP 75 SUGAR 11		COF	5210				
11 15 74	11	15	74	6		SEP 75 SUGAR 11		COF	5230				
11 15 74	11	15	74	12		SEP 75 SUGAR 11		COF	5230				
11 15 74	11	15	74	14		SEP 75 SUGAR 11		COF	5220				
11 15 74	11	15	74	10		MAY 75 SUGAR 11		COF	6144				
11 15 74	11	15	74		12	SEP 75 SUGAR 11		COF	5405				
11 15 74	11	15	74		14	SEP 75 SUGAR 11		COF	5405				
11 15 74	11	15	74		6	SEP 75 SUGAR 11		COF	5405				
11 15 74	11	15	74		4	SEP 75 SUGAR 11		COF	5405				
11 15 74	11	15	74			36 SEP 75 SUGAR 11		PBS				70866.40	
11 15 74	11	15	74	24		OCT 75 SUGAR 11		COF	5155				
11 15 74	11	15	74	9		OCT 75 SUGAR 11		COF	5155				
11 15 74	11	15	74		1	MAR 76 SUGAR 11		COF	4205				

MONTHLY STATEMENTS (EXHIBIT C TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)

16a.

7428

MR COSTA LECOPULOS

UNREGULATED



Harris Lynch  
Pierce  
Fennell & Smith Inc.

3 11/29/74 110-21132  
PAGE DATE ACCOUNT NO

Please advise after receipt of statement of any discrepancies. After receipt of statement, please return the statement to the office of originator. Please advise of any discrepancies in the statement. Please advise of any discrepancies in the statement. Please advise of any discrepancies in the statement.

7428

MR COSTA LECOPULOS

UNREGULATED



Francis O. Smith  
Fleisco  
Francis O. Smith Inc.

## STATEMENT OF COMMODITY ACCOUNT

3 11/29/74 110-21132  
PAGE DATE ACCOUNT NO.

Please indicate the correct number of the commodity in the column of the account number and indicate the date of the transaction in the column of the date. The date of the transaction should be the date of the invoice or the date of the receipt of the commodity.

DATE MO DAY YR	BOUGHT	SOLD	DESCRIPTION	MTS	EXPLAN ATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	SAME NUMBER
11 19 74	8		MAR 76 SUGAR 11	COF		4260				
11 19 74		14	MAR 76 SUGAR 11	COF		4205				
11 19 74		3	MAR 76 SUGAR 11	COF		4225				
11 19 74	24		MAR 76 SUGAR 11	COF		4260				
11 19 74		2	MAR 76 SUGAR 11	COF		4215				
11 19 74		9	MAR 76 SUGAR 11	COF		4205				
11 19 74		2	MAR 76 SUGAR 11	COF		4210				
11 19 74		2	MAR 76 SUGAR 11	COF		4213				
11 19 74		32	MAR 76 SUGAR 11	P&S				20456.10		
11 20 74	8		OCT 75 SUGAR 11	COF		5355				
11 20 74	2		MAR 76 SUGAR 11	COF		4450				
11 20 74	1		MAR 76 SUGAR 11	COF		4450				
11 20 74	2		MAR 76 SUGAR 11	COF		4445				
11 20 74	2		MAR 76 SUGAR 11	COF		4440				
11 20 74	1		MAR 76 SUGAR 11	COF		4449				
11 20 74		4	MAR 76 SUGAR 11	COF		4420				
11 20 74		4	MAR 76 SUGAR 11	COF		4416				
11 20 74	1		MAR 76 SUGAR 11	COF		4440				
11 20 74		9	MAR 76 SUGAR 11	P&S				5712.50		
11 21 74	17		MAR 75 SUGAR 11	COF		6455				
11 21 74	24		MAR 75 SUGAR 11	COF		6455				
11 21 74		8	OCT 75 SUGAR 11	COF		5155				
11 21 74		7	OCT 75 SUGAR 11	COF		5155				
11 21 74		17	OCT 75 SUGAR 11	COF		5155				
11 21 74		9	OCT 75 SUGAR 11	COF		5155				
11 21 74		41	OCT 75 SUGAR 11	P&S				20381.40		
11 22 74		5	MAR 75 SUGAR 11	COF		6120				

MONTHLY STATEMENTS (EXHIBIT C TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)

17a.

7428

MR COSTA LECOPULOS

UNREGULATED



Francis O. Smith  
Fleisco  
Francis O. Smith Inc.

4 11/29/74 110-21132  
PAGE DATE ACCOUNT NO.


Please indicate the correct number of the commodity in the column of the account number and indicate the date of the transaction in the column of the date. The date of the transaction should be the date of the invoice or the date of the receipt of the commodity.



7422

MR COSTA LECOPULOS

UNREGULATED


**Francis Lynch**  
**Flora**  
**Francis O. Smith Inc.**

4	11/29/74	110-21132
PAGE	DATE	ACCOUNT NO.

Please advise your broker immediately of any changes in your account information. Please advise your broker of any changes in your account information. Please advise your broker of any changes in your account information.

## STATEMENT OF COMMODITY ACCOUNT

MONTHLY STATEMENTS (EXHIBIT C TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)


DATE			BOUGHT	SOLD	DESCRIPTION	MT	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	26	74			5 MAR 75 SUGAR 11		PBS			19054.50		
11	26	74		4	MAR 75 SUGAR		LDN	57000				
11	26	74		1	MAR 75 SUGAR		LDN	57000				
11	26	74		20	MAY 75 SUGAR			54200				
11	26	74		13	MAY 75 SUGAR			54200				
11	26	74		5	AUG 75 SUGAR		LDN	49100				
11	27	74			N.Y. CHECK					45259.50		404
11	27	74		5	MAR 75 SUGAR 10		COF	5520				
11	27	74	4		MAR 75 SUGAR		LDN	55000				
11	27	74	1		MAR 75 SUGAR		LDN	55000				
11	27	74			5 MAR 75 SUGAR		PBS				11282.32	
11	27	74		3	MAY 75 SUGAR		LDN	54200				
11	27	74			AS OF 11/26/74							
11	29	74			U.S. FDS CLOSING BALANCE						378215.40	
					ACCOUNT OPEN POSITIONS							
11	21	74	24		MAR 75 SUGAR 11		COF	6455	5320	305088.00		
11	21	74	12		MAR 75 SUGAR 11		COF	6455	5320	152544.00		
			36		UNREALIZED LOSS					457432.00		
11	19	74	10		MAY 75 SUGAR 11		COF	6144	5144	112000.00		
			10		UNREALIZED LOSS					112000.00		
11	27	74		5	MAR 75 SUGAR 10		COF	5520	5320		11200.00	
				5	UNREALIZED PROFIT						11200.00	

18a

7422

MR COSTA LECOPULOS

UNREGULATED


**Francis Lynch**  
**Flora**  
**Francis O. Smith Inc.**

5	11/29/74	110-21132
PAGE	DATE	ACCOUNT NO.


Please advise your broker immediately of any changes in your account information. Please advise your broker of any changes in your account information. Please advise your broker of any changes in your account information.



7428

MR COSTA LECOPULOS

UNREGULATED


**Frank Lynch**  
**Finco**  
**Foreign Office Inc.**

2	11/29/74	110-21132
PAGE	DATE	ACCOUNT NO

Please advise your agent immediately of any  
 discrepancies after making entries placed within your  
 account number and please all correspondence to the office  
 giving your name. Please keep this statement for your use and  
 for distribution of symbols and other matters as required.

## STATEMENT OF COMMODITY ACCOUNT

DATE			BOUGHT	SOLD	DESCRIPTION	MT	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	20	74		20	MAY 75 SUGAR	LDN		54200	50200		93000.00	
11	26	74		13	MAY 75 SUGAR	LDN		54200	50200		60450.00	
11	26	74		3	MAY 75 SUGAR	LDN		54200	50200		13950.00	
				36	UNREALIZED PROFIT						167400.00	
11	26	74		5	AUG 75 SUGAR	LDN		49100	45100		23250.00	
				5	UNREALIZED PROFIT						23250.00	
					EVALUATED AS OF 11/29/74							
					ACCOUNT BALANCE					367782.00	378215.40	
					TOTAL UNREALIZED LOSS						10433.40	
					EQUITY							


MONTHLY STATEMENTS (EXHIBIT C TO  
 AFFIDAVIT OF FRANCIS X. FLANNERY)

10a.

4177

VIKING ENTERPRISES SA  
 HALVETIS BEECH  
 NEW ALTON  
 HAWKS 0434 411N  
 ENCLAND 00000

UNREGULATED


**Frank Lynch**  
**Finco**  
**Foreign Office Inc.**

1	11/29/74	110-21143
PAGE	DATE	ACCOUNT NO

Please advise your agent immediately of any  
 discrepancies after making entries placed within your  
 account number and please all correspondence to the office  
 giving your name. Please keep this statement for your use and  
 for distribution of symbols and other matters as required.

REPORT NO. 0040000

## COMMODITY ACCOUNT PROFILE

DATE 12/20/74  
PAGE 1/1

ACCOUNT NO. 11021132

LONDON

MR COSTA LEOPOLDOS  
24 FALLIRUIS STREET  
VOURVACH  
ATHENS GREECE 00000


UNREG BAL	REG BAL	UNREG EQ	REG EQ	COMB EQ	F / L	REL NET	ST VOL
105846.01	.00	105846		105846			

ACTIVITY DATE	MONTH-TO-DATE BUY	SELL	DESCRIPTION	PRICE	DEBIT	CREDIT	EXPI	TYPE	REF NAR
12/05/74		5	MAR 76 SUGAR 11	COF 2810				UNR	10700215
12/05/74	5		MAR 75 SUGAR 10	COF 4800				UNR	10700216
12/05/74		5	MAR 75 SUGAR 10	COF		40110.00	PBS	UNR	10700217
12/17/74		1	MAR 75 SUGAR 11	COF 4125				UNR	11700292
12/19/74		4	MAR 75 SUGAR 11	COF 4120				UNR	11700293
12/19/74		5	MAR 75 SUGAR 11	COF 4100				UNR	11700294
12/19/74		5	MAR 75 SUGAR 11	COF 4110				UNR	11700295
12/19/74		5	MAR 75 SUGAR 11	COF 4120				UNR	11700296
12/19/74		1	MAR 75 SUGAR 11	COF 4130				UNR	11700297
12/19/74		4	MAR 75 SUGAR 11	COF 4130				UNR	11700298
12/19/74		2	MAR 75 SUGAR 11	COF 4140				UNR	11700299
12/19/74		9	MAR 75 SUGAR 11	COF 4140				UNR	11700300
12/19/74		36	MAR 75 SUGAR 11	COF	992229.60		PBS	UNR	11700301
12/19/74		10	MAY 75 SUGAR 11	COF 3860				UNR	11700302
12/19/74		10	MAY 75 SUGAR 11	COF	256424.00		PBS	UNR	11700303
12/19/74	5		MAR 76 SUGAR 11	COF 2650				UNR	11700304
12/19/74		5	MAR 76 SUGAR 11	COF		4650.00	PBS	UNR	11700305
12/19/74	20		MAY 75 SUGAR	LDN 40350				UNR	11700306
12/19/74	5		MAY 75 SUGAR	LDN 40000				UNR	11700307
12/19/74	3		MAY 75 SUGAR	LDN 40000				UNR	11700308
12/19/74	2		MAY 75 SUGAR	LDN 40000				UNR	11700309
12/19/74	1		MAY 75 SUGAR	LDN 40000				UNR	11700310
12/19/74	5		MAY 75 SUGAR	LDN 40000				UNR	11700311
12/19/74		36	MAY 75 SUGAR	LDN		349562.82	PBS	UNR	11700312
12/19/74	1		AUG 75 SUGAR	LDN 35000				UNR	11700313
12/19/74	4		AUG 75 SUGAR	LDN 35100				UNR	11700314
12/19/74		5	AUG 75 SUGAR	LDN		91273.37	PBS	UNR	11700315

MONTHLY STATEMENTS (EXHIBIT C TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)



MR. COSTA LECOPULOS  
24 KALLIROIS STREET  
VOURVACHI  
ATHENS GREECE 00000

UNREGULATED  
 **Merrill Lynch  
Pierco  
Fenner & Smith Inc.**

1  
PAGE

12/20/76  
DATE

110-2 132  
ACCOUNT NO

Please advise your account executive immediately of any discrepancies. When making inquiries, please mention your account number and address all correspondence to the office servicing your account. Please keep this statement for your records. For description of symbols and other matters see reverse side.

STATEMENT OF COMMODITY ACCOUNT

DATE			BOUGHT	SOLD	DESCRIPTION	MKT.	EXPLAN- ATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT
MO	DAY	YR									
12	20	74			CLOSING BALANCE					105,846.01	

CODE 4078 REV 4/74 PRINTED IN U.S.A.

FINAL STATEMENT (EXHIBIT D TO  
AFFIDAVIT OF FRANCIS X. FLANNERY)

212

MARKET SYMBOLS

CBT Chicago Board of Trade  
CME Chicago Mercantile Exchange  
COC New York Cocoa Exchange  
COF New York Coffee and Sugar Exchange  
COM New York Commodity Exchange  
ICE International Currency Exchange  
KAN Kansas City Board of Trade  
LDN London  
MPS Minneapolis Grain Exchange  
NYC New York Cotton Exchange  
NYM New York Mercantile Exchange  
PA Paris  
PAC Pacific Commodity Exchange  
SYD Sydney  
WPG Winnipeg

EXPLANATION SYMBOLS

ABDN = Abandon  
P&S = Purchase and Sale  
RECD = Received  
DLVY = Delivery

It is agreed between Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) and the customer:

1. That all transactions are subject to the constitution, rules, regulations, customs, usages, rulings and interpretations of the board or exchange or market, and its clearing house, if any, where the transactions are executed, and to all federal and/or state statutes to the extent that same may be applicable thereto.
2. That the within and all other transactions made for your account by us contemplate actual receipt and delivery of the property and payment therefor and that all property sold for your account is sold upon the representation that you have same in your possession actually or potentially.
3. That the right is reserved by us to close transactions without further notice when, in our judgement, margins on deposit with us are below our requirements.
4. That unless the customer indicates non-acquiescence in writing, this agreement shall inure to the benefit of the successors of MLPF&S, by merger, consolidation or otherwise and its assigns and MLPF&S is authorized to transfer the account of the customer to any such successors or assigns.

MERRILL LYNCH, PIERCE, FENNER & SMITH INC.



AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK  
COUNTY OF NEW YORK

ss. AFFIDAVIT OF PERSONAL SERVICE

Merrill Lynch, Pierce, Fenner and Smith Incorporated

Plaintiff

against

REPUBLIC OF GREECE )  
PROVINCE OF ATTICA )  
CITY OF ATHENS )  
EMBASSY OF THE )  
UNITED STATES OF AMERICA )

Costa Lecopoulos, a/k/a,

SS: Constantinos Lekopoulos

Defendant

I, George J. Kapetanios, Court Bailiff, a resident of 8, Nikitara Str. Athens Greece being duly sworn, depose and say that I am not a party to the action and I am over 18 years of age.

That on the 5th day of March 1975 I personally served upon Costa Lecopoulos a/k/a Constantinos Lekopoulos, a resident of Dukissis Plakentias 13/20 Ampelokipi, Athens, Greece by delivering to him personally a true copy of the summons and complaint thereof filed before the Supreme Court of the State of New York County of New York.

I know the person so served to be the person mentioned and described in said papers as the defendant therein.

My means of knowledge as to the identity of the person served was as follows:

In my question whether he was Costa Lecopoulos a/k/a Constantinos Lekopoulos he gave an affirmative answer.

Sworn before me, this 14th day of March 1975

George J. Kapetanios

DEAN DIZIKES  
AMERICAN CONSUL



NOTICE OF FILING PETITION  
FOR REMOVAL

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

MERRILL LYNCH, PIERCE, FENNER & SMITH,  
INCORPORATED,

Plaintiff.

- against -

COSTA LEKOPOLOS, a/n/a  
CONSTANTINOS LEKOPOULOS,

Defendant.

INDEX No. 00206-1975

75 Civ 1622

NOTICE OF FILING PETITION FOR REMOVAL

S I R S :

PLEASE TAKE NOTICE that a verified petition for removal of the above-entitled action to the United States District Court for the Southern District of New York, together with a bond for removal, copies of which petition and bond are annexed hereto, were duly filed in the United States District Court for the Southern District of New York on April 2, 1975.

Dated: New York, N.Y.

April 2, 1975

WEISS, DAWID, FROSS & LEHRMAN  
Attorneys for Defendant  
880 Third Avenue  
New York, N.Y. 10022  
Tel.: (212) 826-0770

To: BROWN, WOOD, FULLER,  
CALDWELL & IVEY, ESQS.  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, N.Y. 10006



PETITION FOR REMOVAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INCORPORATED,

Plaintiff.

- against -

COSTA LEKOPOLOS, a/n/a  
CONSTANTINOS LEKOPOULOS,  
Defendant.

PETITION FOR REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of Constantine Lekopoulos respectfully  
shows on information and belief:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith,  
Incorporated ("Merrill Lynch") has commenced an action in the  
Supreme Court of New York, County of New York, against petitioner  
(sued therein as "Costa Lekopolos, a/k/a Constantinos Lekopoulos"),  
which action is pending under index number 00206-1975. On informa-  
tion and belief, copies of the summons and complaint in that action  
were first received by petitioner on March 5, 1975. Copies of  
the summons and complaint are annexed hereto. No further  
proceedings have been had therein except that petitioner has  
obtained an extension of time within which to move or answer with  
respect to the complaint.



PETITION FOR REMOVAL

2. The above-described action is one of which this court has original jurisdiction under the provisions of 28 U.S.C. Sec. 1332, and is one which may be removed to this court by the petitioner pursuant to 28 U.S.C. Sec. 1441 in that it is a civil action wherein the matter in controversy exceeds the sum of \$10,000 exclusive of interest and cost, and is between citizens of a State and of a foreign State. The plaintiff Merrill Lynch at the time the action was commenced was and still is a corporation organized under the laws of the State of Delaware and having its principal office in the State of New York. Petitioner-defendant at the time this action was commenced was and still is a citizen of Greece and resides in Athens, Greece. The complaint seeks damages in the amount of \$105,846.01.

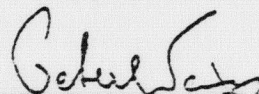
WHEREFORE, petitioner prays that the above-described action now pending against him in the Supreme Court of the State of New York, County of New York, be removed therefrom to this court.

Dated: New York, N.Y.  
April 2, 1975


CONSTANTINE LEKOPOULOS  
Petitioner

WEISS, DAWID, FROSS & LEHRMAN  
Attorneys for Petitioner  
880 Third Avenue  
New York, N.Y. 10022  
Tel.: (212) 826-0770

BY



PETER WEISS



HENRY WINESTINE  
Of Counsel



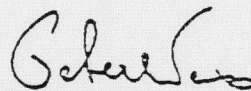
PETITION FOR REMOVAL

STATE OF NEW YORK )  
 ) SS.  
COUNTY OF NEW YORK )

Peter Weiss, being duly sworn, deposes and says that he is a member of the firm of Weiss, Dawid, Fross & Lehrman, attorneys for the petitioner herein; that he has read the foregoing petition and knows the contents thereof and that the same is true upon information and belief.

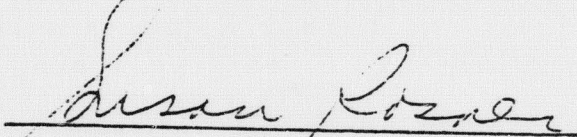
The source of deponent's information and belief is information supplied to him by petitioner and also the pertinent allegations of the verified complaint, which deponent believes to be true with respect to the citizenship of the parties.

This verification is made by deponent rather than petitioner because petitioner is not in the United States.



Peter Weiss

Sworn to before me this  
2nd day of April, 1975.



Notary Public

SUSAN ROSNER  
NOTARY PUBLIC, State of New York  
No. 31-8662820  
Qualified in New York County  
Commission Expires March 30, 1976



NOTICE OF MOTION TO STAY ACTION, COMPEL  
ARBITRATION AND OBTAIN A PROTECTIVE ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK.

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH	:	NOTICE OF MOTION TO
INCORPORATED,	:	STAY ACTION, COMPEL
Plaintiff,	:	ARBITRATION AND OBTAIN
- against -	:	<u>A PROTECTIVE ORDER</u>
COSTA LECOPULOS, a/k/a	:	Index No.
CONSTANTINOS LEKOPOULOS,	:	75 Civ. 1622 (JMC)
Defendant.	:	

-----x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Francis X. Flannery and the exhibits annexed thereto, and upon the memorandum of law submitted herewith, the undersigned will move this Court before the Honorable John M. Cannella in Room 1001, United States Courthouse, Foley Square, New York, New York on the 2nd day of May, 1975 at 10:00 a.m. or as soon thereafter as counsel can be heard for an order pursuant to Sections 3 and 4 of the United States Arbitration Act, 9 U.S.C. §§3 and 4, staying this action and directing the parties to submit their dispute to arbitration before the New York Stock Exchange and also pursuant to F.R. Civ. P. 26(c) directing that discovery not be had on the grounds that discovery into the merits of a claim to be arbitrated is not permitted, and for such other and further relief as



NOTICE OF MOTION TO STAY ACTION, COMPEL  
ARBITRATION AND OBTAIN A PROTECTIVE ORDER

the Court may deem just and proper.

Dated: New York, New York  
April 22, 1975

Yours, etc.,  
BROWN, WOOD, FULLER, CALDWELL & IVEY

By *Rog J. Hawke*  
(A Member of the Firm)  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, New York 10006

TO:

WEISS, DAWID, FROSS & LEHRMAN  
Attorneys for Defendant  
880 Third Avenue  
New York, New York 10022



AFFIDAVIT OF FRANCIS X. FLANNERY IN SUPPORT OF  
MOTION TO STAY ACTION, COMPEL ARBITRATION AND  
OBTAIN A PROTECTIVE ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH	:	AFFIDAVIT IN SUPPORT
INCORPORATED,	:	OF MOTION TO STAY
Plaintiff,	:	ACTION, COMPEL
- against -	:	ARBITRATION AND OBTAIN
	:	<u>A PROTECTIVE ORDER</u>
COSTA LECOPULOS, a/k/a	:	Index No.
CONSTANTINOS LEKOPOULOS,	:	75 Civ. 1622 (JMC)
Defendant.	:	

-----x

STATE OF NEW YORK    )  
                          : ss:  
COUNTY OF NEW YORK )

1. I am an attorney in the Law Department of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"). I am fully familiar with the facts and circumstances of this action and I make this affidavit in support of Merrill Lynch's motion to stay this action, to compel arbitration of the claims made herein before the New York Stock Exchange, and to obtain a protective order against discovery into the merits of arbitrable claims.

2. The defendant, Costa Lecopulos ("Lecopulos") is a resident of Greece who opened an account with Merrill Lynch on or about November 5, 1974 for the purpose of trading commodity futures contracts. In the conduct of this account, the defendant placed many orders for the purchase and sale of commodity futures contracts in New York. These orders were forwarded to New York and executed by Merrill Lynch as defendant's agent. Merrill Lynch seeks to recover a debit balance of \$105,846.01 which remained in the defendant's



AFFIDAVIT OF FRANCIS X. FLANNERY IN SUPPORT OF  
MOTION TO STAY ACTION, COMPEL ARBITRATION AND  
OBTAIN A PROTECTIVE ORDER

account as a result of his trading, with interest from  
December 20, 1974.

3. In connection with the opening of this account, the  
defendant signed a Commodity Account Agreement, a copy of  
which is annexed hereto as Exhibit A. This Agreement contains  
an arbitration clause, which reads as follows:

"It is agreed that any controversy between us  
arising out of your business or this agreement, shall  
be submitted to arbitration conducted under the pro-  
visions of the Constitution and Rules of the Board of  
Governors of the New York Stock Exchange, except how-  
ever if the controversy involves any Security or  
Commodity transaction or contract relating thereto  
executed on an exchange located outside of the United  
States then such controversy, at the election of  
either of us, shall be submitted to arbitration con-  
ducted under the constitution and rules of such exchange  
(and if neither of us so elects, arbitration shall  
be conducted under the provisions of the Constitution  
and Rules of the Board of Governors of the New York  
Stock Exchange). Arbitration must be commenced within  
one year after the cause of action accrued by service  
upon the other of a written demand for arbitration or  
a written notice of intention to arbitrate, naming  
therein the arbitration tribunal."

4. Prior proceedings in this action have been minimal.  
On January 6, 1975 Merrill Lynch obtained an order of  
attachment against the defendant in the Supreme Court of the  
State of New York, County of New York. A copy of this order  
of attachment is annexed hereto as Exhibit B. In order to  
preserve the order of attachment in effect, it was necessary  
for Merrill Lynch to serve process upon the defendant within  
60 days after the issuance of an order of attachment, pursuant  
to CPLR §6213. Therefore, Merrill Lynch served a summons  
and complaint personally on the defendant in Greece on  
March 5, 1975. A copy of the complaint is annexed hereto as  
Exhibit C.

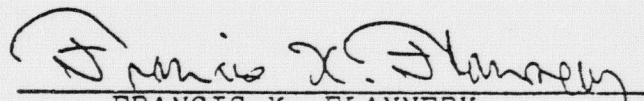


AFFIDAVIT OF FRANCIS X. FLANNERY IN SUPPORT OF  
MOTION TO STAY ACTION, COMPEL ARBITRATION AND  
OBTAIN A PROTECTIVE ORDER

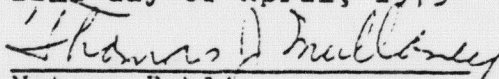
5. The defendant removed this action to this Court on April 2, 1975 by filing a Notice of Petition for Removal. The defendant's time to move or answer was subsequently extended to May 5, 1975, which extension has not yet expired, and no motion or answer has yet been made.

6. On April 18, 1975, defendant's attorneys served a purported notice to take depositions and request for production of documents upon the attorneys for Merrill Lynch. Copies of these documents are annexed hereto as Exhibit D. Defendant seeks to take the depositions of Jeronimo Villalba, the manager of the London office of Merrill Lynch, Pierce, Fenner & Smith Ltd. where defendant maintained his account, as well as Mark Lowe and Marc Sibony, two account executives in that office. Defendant also seeks production of substantially all writings generated by his account, including all written communications and any memoranda of oral communications between the parties. Merrill Lynch submits that such discovery into the merits of a claim to be arbitrated is not permissible, and hence moves for a protective order against such discovery.

7. Merrill Lynch now seeks an order staying this action, directing both parties to submit their claims to arbitration before the New York Stock Exchange in accordance with the terms of the written arbitration agreement between them, and also directing that no discovery be permitted into the merits of claims to be arbitrated.

  
FRANCIS X. FLANNERY

Sworn to before me this  
22nd day of April, 1975

  
Notary Public

THOMAS J. MULLANEY  
Notary Public, State of New York  
No. 33-8000335  
Qualified in Nassau County  
Cert. Filed in New York County  
Commission Expires March 30, 1978



COMMODITY ACCOUNT AGREEMENT (EXHIBIT A  
TO AFFIDAVIT OF FRANCIS X. FLANNERY)

CODE 91R 6-67

COMMODITY ACCOUNT AGREEMENT

Merrill Lynch, Pierce, Fenner & Smith Incorporated

In consideration of your acting as broker for the undersigned, I hereby consent and agree that:

Any and all transactions shall be subject to the constitution, rules, regulations, customs and usages of the exchange or market and its clearing house, if any, where executed.

Any and all commodities and contracts relating thereto, now or hereafter held or carried by you for me, (either individually or jointly with others) are to be held by you as security for the payment of any liability of mine to you.

You shall have the right, whenever in your discretion you consider it necessary for your protection, or in the event that a petition in bankruptcy or for the appointment of a receiver, is filed by or against me, or an attachment is levied against my account(s) with you, or in the event of my death, to sell any or all commodities in my account(s) (either individually or jointly with others) to buy any or all commodities which may be short in such account(s) and to close any or all outstanding contracts, all without demand for margin or additional margin, notice of sale or purchase, or other notice or advertisement, and any such sales or purchases may be made at your discretion on any exchange or other market where such business is then usually transacted, and on any such sale you may be the purchaser for your own account; it being understood that a prior demand, or call, or prior notice of the time and place of such sale or purchase shall not be considered a waiver of your right to sell or to buy without demand or notice as herein provided; and it being further understood that I shall at all times be liable for the payment of any debit balance owing in my account(s) with you upon demand, and that I shall be liable for any deficiency remaining in any such account(s) in the event of the liquidation thereof in whole or in part by you or by me.

I represent that I am more than twenty-one years of age.

All communications, whether by mail, telegraph, telephone, messenger, or otherwise, sent to me at address as given to you from time to time shall constitute personal delivery to me.

It is agreed that any controversy between us arising out of your business or this agreement, shall be submitted to arbitration conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange, except however if the controversy involves any Security or Commodity transaction or contract relating thereto executed on an exchange located outside of the United States then such controversy, at the election of either of us, shall be submitted to arbitration conducted under the constitution and rules of such exchange (and if neither of us so elects, arbitration shall be conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange). Arbitration must be commenced within one year after the cause of action accrued by service upon the other of a written demand for arbitration or a written notice of intention to arbitrate, naming therein the arbitration tribunal.

(OVER)

BEST COPY AVAILABLE

COMMODITY ACCOUNT AGREEMENT (EXHIBIT A  
TO AFFIDAVIT OF FRANCIS X. FLANNERY)

This agreement and its enforcement shall be governed by the laws of the State of New York.  
This agreement shall also inure to the benefit of your successors, by merger, consolidation or otherwise, and assigns, and you may transfer my account to any such successors or assigns.  
This agreement shall continue until signed notice of revocation is received by or from me, and in case of such revocation it shall continue effective as to transactions entered into prior thereto.

Date 10/11/74 (Signature) [Signature]

COMMODITY ACCOUNT AGREEMENT

Nov 18 5 37 PM '74

116-21132

CONSTANTINOS LECOPULOS

UNREGULATED  
REGULATED

NAME

000 CO CCCC

4102

ACCOUNT NO. 1132

MR COSTA LECOPULOS

24 LLIROIS

VOURVACHIL

ATHENS

GRECE

CMD 1-DG

(OVER)



NOTICE TO TAKE DEPOSITION (EXHIBIT D  
TO AFFIDAVIT OF FRANCIS X. FLANNERY)

UNITED STATES DISTRICT COURT.  
SOUTHERN DISTRICT OF NEW YORK

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INCORPORATED,

Plaintiff,

- against -

COSTA LEKOPOLOS a/k/a  
CONSTANTINOS LEKOPOULOS,

Defendant.

75 CIV. 1622 JMC

NOTICE TO TAKE DEPOSITION

SIRS:

PLEASE TAKE NOTICE that defendant will take the deposition  
of plaintiff upon oral examination by its officers, agents and  
employees specified below at 880 Third Avenue, New York, New  
York, 16th Floor, on the days indicated:

Mark Lowe	April 30, 1975 at 10:00 a.m.
Mark Siboney	May 1, 1975 at 10:00 a.m.
Jerry Villalba	May 2, 1975 at 10:00 a.m.

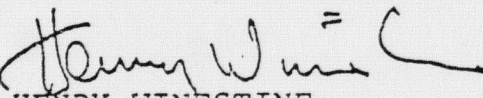
The oral examination will continue from day to day until completed.  
You are invited to attend and cross-examine.

Dated: New York, New York  
April 17, 1975

WEISS DAWID FROSS & LEHRMAN

By

Attorneys for Defendant  
880 Third Avenue  
New York, N.Y. 10022  
Tel: (212) 826-0770

  
HENRY WINESTINE  
Of Counsel

To: BROWN, WOOD, FULLER, CALDWELL  
& IVEY, ESQS.  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, N.Y. 10006



DEFENDANT'S FIRST REQUEST TO PRODUCE DOCUMENTS  
(EXHIBIT D TO AFFIDAVIT OF FRANCIS X. FLANNERY)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INCORPORATED,

Plaintiff,

- against -

COSTA LEKOPOLOS a/k/a  
CONSTANTINOS LEKOPOULOS,

Defendant

75 CIV. 1622 JMC

DEFENDANT'S FIRST REQUEST  
TO PRODUCE DOCUMENTS

SIRS:

PLEASE TAKE NOTICE that pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant requests that plaintiff produce for inspection and copying the following documents:

1. Every contract or writing executed by defendant at the time of, or in connection with, the opening of his account or accounts with plaintiff in November, 1974.
2. Every written communication from defendant, or anyone on his behalf, to plaintiff, including telegraphic and Telex communications.
4. Order tickets for each transaction in defendant's account No. 110-21132 from the time said account was opened until it was closed out.
5. Each confirmation ticket sent by plaintiff to defendant.
6. Every memorandum, notation, inter-office communication or other writing in plaintiff's possession recording:
  - (a) instructions given to plaintiff by defendant with respect to his accounts,
  - (b) review of defendant's accounts by plaintiff's operating and supervisory employees.



DEFENDANT'S FIRST REQUEST TO PRODUCE DOCUMENTS  
(EXHIBIT D TO AFFIDAVIT OF FRANCIS X. FLANNERY)

(c) the substance of any verbal communications between plaintiff and defendant, or anyone acting on defendant's behalf.

The production of the said documents shall take place on April 30, 1975, at 9:30 a.m. at 880 Third Avenue, New York, New York, 16th Floor.

Dated: New York, New York  
April 17, 1975

WEISS DAVID FROSS & LEHRMAN

By 

Attorneys for Defendant  
880 Third Avenue  
New York, N.Y. 10022  
Tel: (212) 826-0770

  
HENRY WINESTINE  
Of Counsel

To: BROWN, WOOD, FULLER, CALDWELL & IVEY, ESQS.  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, N.Y. 10006



NOTICE OF MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED, :

Plaintiff, :

- against - :

COSTA LECOPULOS, a/k/a  
CONSTANTINOS LEKOPOULOS, :

Defendant. :

NOTICE OF MOTION FOR AN  
ORDER DISMISSING ACTION  
FOR LACK OF JURISDICTION  
PURSUANT TO RULE 12(b)(2)  
F.R.C.P.

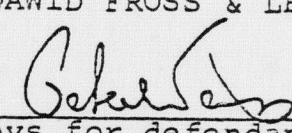
Index No.  
75 Civ. 1622 (JMC)

-----X  
S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of  
Constantinos Lekopoulos sworn to on August 8, 1975 before  
Dimitrios M. Manoussakis, a Notary Public and the annexed  
Official Translation thereof, as well as the complaint herein,  
the undersigned will move before Hon. John M. Cannella, one of  
the Judges of this Court, in Room 1001, United States Courthouse,  
Foley Square, New York, New York, on the 22nd day of  
September, 1975 for an order pursuant to Rule 12(b)(2) of  
the Federal Rules of Civil Procedure on the ground that this  
Court lacks jurisdiction over the person of defendant.

Dated: New York, New York  
September 12, 1975

WEISS DAWID FROSS & LEHRMAN

BY   
Attorneys for defendant  
880 Third Avenue  
New York, New York 10022  
tel: (212) 826-0770

TO: BROWN, WOOD, FULLER, CALDWELL & IVEY, ESQS.  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, N.Y. 10006



AFFIDAVIT OF CONSTANTINOS LECOPOULOS IN SUPPORT  
OF MOTION TO DISMISS


REPUBLIQUE HELLENIQUE  
MINISTERE DES AFFAIRES ETRANGERES  
BUREAU DE TRADUCTION

OFFICIAL TRANSLATION

Nº 50241.

Nº 10609.

A F F I D A V I T.



Athens, this eighth (8) August of the year nineteen hundred seventy five (1975), day of Friday, in my Notary Public Office sited in Room G - 3 on third floor in the building Nº 4 Themistocleous Street, property of Petros Pantazis, before me DEMITRIOS MANOUSSAKIS son of Miltiadis, Notary Public residing in Athens with seat in Athens, appeared Mr CONSTANTINE LECOPOULOS, son of Anthony and Efrossyni, a Civil Engineere, known to me and not challengeable by Law, resident of Athens, and according to his identity card at Kifissias street Nº 18, and according to his declaration Doukissis tis Plakentias street Nº 18, born in Athens in the year 1928, holder of identity card Nº A. 322279/17.3.1963 issued by XXIVth Athens Police Station, who expressly declared that he knows reading and writing and does not need the cooperation of a second Notary Public and excludes the presence of witnesses, he asked me to draw up the present, as he likes to declare by oath before me in my quality of Notary Public, about the following case: So he put his right hand on the Sacred Gospel, according to art. 425 of Civil Procedure Code and duly sworn deposes and says:

" I am the defendant in a pending action raised against me by MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (plaintiff, before the Regional Court of New York South District, U.S. S., and I submit this affidavit in support of a motion to dismiss the complaint on the ground that this Court lacks jurisdiction over me.

1.- Because I am Greek citizen, resident of Athens, Greece, as evidenced from Copies of the summons and complaint



AFFIDAVIT OF CONSTANTINOS LECOPOULOS IN SUPPORT  
OF MOTION TO DISMISS

REPUBLIQUE HELLENIQUE  
MINISTRE DES AFFAIRES ETRANGERES  
BUREAU DE TRADUCTION

OFFICIAL TRANSLATION.

No. 50241.

- 2 -

in this action, which were delivered to me in Athens on or about March 5th 1975.

2.- This action arises out of a transaction in which I opened a commodities futures trading account with plaintiff's branch or affiliate in London, England.

3.- The discussions about opening the account initially, took place in Athens, in October 1974, and the account was formally opened when I visited London early in November 1974.

4.- Thereafter, during the period in which the account remained active, I had further communication with plaintiff's London affiliate. In every case those communications were made by (or to) me or on my behalf, in Athens Geneva and London. At no time during the entire period did I ever come to the State of New York or address any written or oral communication to any person in the State of New York, regarding my account with plaintiff.

5.- Since my account was handled entirely in plaintiff's London Office, there is no contact with the State of New York, that alone such contact as would give the Courts of New York jurisdiction, fact that never happened.

Wherefore, deponent respectfully prays for an order dismissing the complaint herein and directing the entry of a judgment in favour of the defendant and against plaintiff.

Thus, God helps me and his Sacred Gospel"

In testimony thereof and at his request the present was drawn up in two (2) sheets of paper, for which one hundred ninety five Drachmas (195) have been collected for fees and



AFFIDAVIT OF CONSTANTINOS LECOPOULOS IN SUPPORT  
OF MOTION TO DISMISS

REPUBLIQUE HELLENIQUE  
MINISTRE DES AFFAIRES ETRANGERES  
BUREAU DE TRADUCTION

OFFICIAL TRANSLATION.

50241.

No.

- 3 -

certificates, with one copy, which read clearly and intensively to the  
hearing of affiant and confirmed, is signed by him and myself  
as follows:

The Affiant:  
signed.

The Notary Public.

Dimitrios M. Manoussakis.

Signed and sealed.

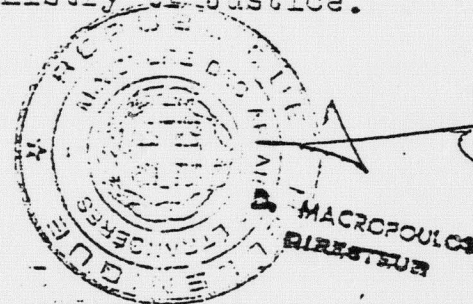
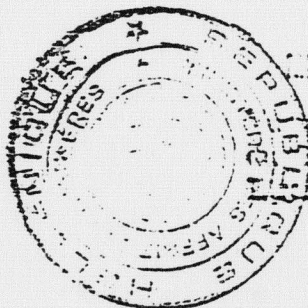
Certified true translation

Athens, 9 AUG 1975

The Translator

Alexander D. Meliniotis

Seen for the above signature:  
President, Athens District  
Court of First Instance,  
Ministry of Justice.



Legation des Affaires Etrangères  
Athènes, 11 AOUT 1975

LE DIRECTEUR

MACROPOULOS  
DIRECTEUR



REPLY AFFIDAVIT OF PETER WEISS IN OPPOSITION  
TO MOTION TO COMPEL ARBITRATION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED, :

Plaintiff, :

- against - :

75 Civ. 1622 (JMC)

COSTA LECOPULOS, a/k/a :  
CONSTANTINOS LEKOPOULOS, :

Defendant. :

REPLY AFFIDAVIT

-----X  
STATE OF NEW YORK  
COUNTY OF NEW YORK:

PETER WEISS, being duly sworn, says:

1. I am a member of Weiss Dawid Fross & Lehrman, counsel for defendant Costa Lecopulos. I am familiar with the facts herein and submit this affidavit in opposition to plaintiff's motion to stay these proceedings, compel arbitration and for a protective order.

2. Attached hereto as Exhibit A is a copy of a document dated November 5, 1974 entitled "New Account Information For Commodity Speculative Accounts". On information and belief, this document, prepared in the office of plaintiff's London affiliate prior to the opening of defendant's account, contains gross inaccuracies which would be material to any consideration of the validity of the arbitration agreement, as well as to any determination of whether plaintiff committed violations of Sec. 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

3. Attached hereto as Exhibit B is a copy of the profile of Lecopulos' account with Merrill Lynch during the entire period giving rise to this action, which was provided to me by counsel



REPLY AFFIDAVIT OF PETER WEISS IN OPPOSITION  
TO MOTION TO COMPEL ARBITRATION

for Merrill Lynch. It will be seen that, although Merrill Lynch, in its own "New Account Information" (Exh. A) suggested a dollar trading limit of \$200,000 for Lecopulos' account, the account was, in fact, opened with a deposit of \$500,000, all of which was shortly lost. If the Sec. 10(b) question were to be reached by the court, Exhibit B would raise a large number of disputed issues which could not be resolved without trial. On the basis of the exhibit and of information provided to me by the defendant, such questions would include defendant's allegations that

- a) he was deceived and manipulated by plaintiff with respect to both the opening of the account and the subsequent trading in it;
- b) the account was operated entirely, or substantially, as a discretionary account;
- c) Merrill Lynch engaged in unconscionable "churning";
- d) Merrill Lynch was grossly negligent in protecting his position; and
- f) the account shows unexplained debits.

4. I have spent the better part of one day in conference with Mr. Lecopulos, with the aid of an interpreter. Based on this experience, I state that, unless he is a consummate actor, his ability to express himself in English is virtually non-existent and his comprehension of the English language is extremely limited. This, of course, raises serious questions as to Mr. Lecopulos' understanding of any documents which he signed at the request of Merrill Lynch, all of which were in English, as well as of the oral communications which passed between him and the officers or employees of Merrill Lynch or its British affiliate.



REPLY AFFIDAVIT OF PETER WEISS IN OPPOSITION  
TO MOTION TO COMPEL ARBITRATION

5. It is an undisputed fact that Lecopulos opened the account in question at an office in London and that all of his transactions relating to such account were with such office. On information and belief, the plaintiff herein, Merrill Lynch, Pierce, Fenner & Smith Incorporated, does not conduct business in Great Britain in its own capacity, but has a British subsidiary, Merrill Lynch, Pierce, Fenner & Smith Limited, which is not a party to this proceeding. This raises several problems as to the enforceability by plaintiff of any alleged agreement with defendant.

6. Article II(3) of the United Nations Convention on Recognition and Enforcement of Arbitral Awards, 3 U.S.T. 2519, T.I.A.S. 6997 (1970) provides:

The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

If, contrary to defendant's expectation, this action should survive the motion to dismiss on jurisdictional grounds, the foregoing provision would impose an obligation on this Court to pass on the validity of the alleged agreement to arbitrate.

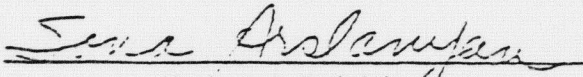


REPLY AFFIDAVIT OF PETER WEISS IN OPPOSITION  
TO MOTION TO COMPEL ARBITRATION

7. For the reasons stated above and those set forth in  
defendant's memorandum of law, plaintiff's motion to compel arbitra-  
tion should be denied.

  
Peter Weiss

Sworn to before me this  
12th day of September, 1975.

  
Notary Public

EDNA ARSLANYAN  
NOTARY PUBLIC, State of New York  
No. 41-9446007  
Qualified in Queens County  
Resides in New York County

AFFIDAVIT OF MARC SIBONY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED,

Plaintiff,

- against -

COSTA LECOPULOS, a/k/a  
CONSTANTINOS LEKOPOULOS,

Defendant.

:  
:  
:  
:  
Index No.  
75 Civ. 1622 (JMC)

: AFFIDAVIT

-----x  
Great Britain and Northern Ireland )  
London, England )  
Embassy of the United States of America )

ss.:

MARC SIBONY, being duly sworn, deposes and says:

1. I am a Vice President of Merrill Lynch, Pierce, Fenner & Smith Ltd., and an account executive in its London retail office. I was personally in charge of the commodity account of Costa Lecopulos ("Lecopulos").

2. I normally conversed with Lecopulos in French. French is my native language. Lecopulos speaks it and understands it.

3. At his request I orally explained in French the Commodity Account Agreement, including the arbitration clause contained therein. He indicated that he understood it and signed it willingly.

4. Mr. Lecopulos ordered the purchase and sale of a total of 274 contracts of New York Sugar 11 and five contracts of New York Sugar 10 during the time he maintained

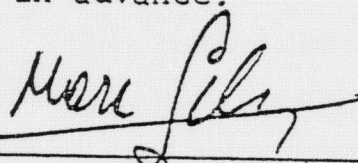


AFFIDAVIT OF MARC SIBONY

his account with Merrill Lynch, Pierce, Fenner & Smith Incorporated. His maximum position at any one time was 51 contracts of New York Sugar 11. He specifically ordered the purchase of New York Sugar 10 and 11, and he knew that his orders to purchase New York Sugar 10 and 11 had to be executed in New York.

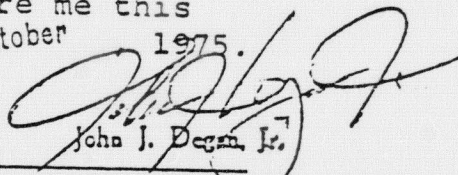
5. Lecopulos was physically present in my office during the execution of most of his transactions before the final liquidation of his account. On those occasions, he insisted that I call New York to place his orders, he insisted upon standing at my desk while I did so, and he even shouted instructions in French into the open line while I was on the telephone to New York.

6. This account was definitely not a discretionary account. Each and every one of the trades in the account was authorized by Mr. Lecopulos in advance.



MARC SIBONY

Sworn to before me this  
~~Sixteenth~~ day of October 1975.

  
John J. Deegan Jr.

Consul of the United States  
of America at London, England



AFFIDAVIT OF JERONIMO VILLALBA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED, :

Plaintiff, :

- against - :

Index No.  
75 Civ. 1622 (JMC)

COSTA LECOPULOS, a/k/a :  
CONSTANTINOS LEKOPOULOS, :

Defendant. :

-----x  
Great Britain and Northern Ireland )  
London, England ) ss.:  
Embassy of the United States of America )

JERONIMO VILLALBA, being duly sworn, deposes and says:

1. I am the Manager of an office of Merrill Lynch, Pierce, Fenner & Smith Ltd. ("Merrill Lynch Ltd.") a subsidiary of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") at London, England. As such, I am fully familiar with the commodities account maintained at Merrill Lynch through the facilities of this office by Mr. Costa Lecopulos, a/k/a Constantinos Lekopoulos ("Lecopulos"), during November and December of 1974.

2. Merrill Lynch Ltd. is a company registered in England which is an indirect subsidiary of Merrill Lynch, a Delaware corporation with its home office in New York. Merrill Lynch Ltd. merely services the accounts of customers who wish to deal with Merrill Lynch. In this capacity Merrill Lynch Ltd. transmits orders, information and funds between Merrill Lynch and its overseas customers. The



AFFIDAVIT OF JERONIMO VILLALBA

accounts themselves, including the account of Mr. Lecopulos, are actually maintained by Merrill Lynch in New York. This fact was evident to Lecopulos and understood by him as is shown by the following documents:

a) A Commodity Account Agreement signed by Lecopulos showing that his account was with Merrill Lynch and would be governed by the laws of the State of New York.

b) A hedge letter addressed to Merrill Lynch signed November 15, 1975 by Lecopulos.

c) A power of attorney in favor of Mrs. Lecopulos addressed to Merrill Lynch.

These papers are annexed hereto as Exhibit A.

3. In the period when he had an account with Merrill Lynch, Lecopulos instructed Merrill Lynch to buy and sell for his account, and Merrill Lynch did buy and sell, a total of 274 contracts of New York Sugar 11 and five contracts of New York Sugar 10. Sugar 11 is a contract to deliver 50 long tons (2,240 pounds each) of sugar F.O.B. certain Caribbean ports. Sugar 10 is a contract to deliver 50 long tons of sugar F.O.B. New York or Philadelphia. Both the Sugar 11 and Sugar 10 contracts may be bought and sold only on the New York Coffee and Sugar Exchange which is located at 79 Pine Street in New York City. Both New York Sugar 11



AFFIDAVIT OF JERONIMO VILLALBA

and New York Sugar 10 are different from the London Sugar contract, which is a contract to deliver sugar C.I.F. to certain European ports and which is quoted in pounds sterling per ton of sugar. Lecopulos was specific when he ordered New York Sugar for his account and he specifically knew that these contracts could only be purchased or sold in New York. Specimen copies of the New York Sugar 11 and Sugar 10 contracts are annexed hereto as Exhibits B and C.

4. I am informed that Lecopulos claims there is some inconsistency on a copy of the New Account Information form because that copy shows a suggested dollar trading limit of \$200,000, whereas he deposited \$500,000 with Merrill Lynch on November 12, 1974. The agreement which I personally reached with Lecopulos was for a trading limit of 50 contracts. At the then current margin requirements of \$12,000 per contract, this equalled a total of \$600,000. The figure of \$200,000 on the copy which Lecopulos has shown to the Court is a scrivener's error, which was promptly corrected before I signed the form as Office Manager. I enclose a copy of the completed form, dated November 5, 1974 as Exhibit D. Lecopulos was certainly not confused by this error, as is shown by his prompt deposit of \$500,000 on November 12, 1974 to margin 40 contracts.

5. I am also informed that Lecopulos' attorney has claimed that Lecopulos may not have understood the documents he signed or the oral communications he received from Merrill Lynch because of his alleged limited knowledge of the English



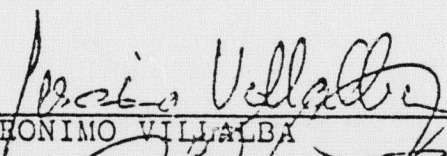
AFFIDAVIT OF JERONIMO VILLALBA

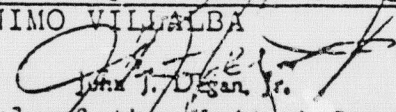
language. Lecopulos spoke mainly in French, which I and many others in this office speak fluently, and there was no lack of comprehension or communication between himself and Merrill Lynch. Lecopulos could have asked for explanations or translations of any documents at any time, and the same would have been given to him. I know that Marc Sibony, a Vice President of Merrill Lynch Ltd. and the account executive in charge of the Lecopulos account, explained the Commodity Account Agreement, including the arbitration clause, in French to Lecopulos. I also know that Lecopulos was accompanied by his wife, who spoke English, and also had several Greek friends who could also have assisted him with English, if any assistance were needed.

6. The Lecopulos account was most definitely not a discretionary account. Each transaction was approved by Lecopulos in advance up to Wednesday, November 27, 1974. At that time the sugar market was down the limit, Lecopulos instructed us to do our best in liquidating his account, and he advised us that he would pay the final deficit. Lecopulos was temporarily residing in London at the time he was dealing with Merrill Lynch, and was physically present in the Merrill Lynch Ltd. office in London during most of these transactions before the final liquidation of his account. He took a great interest in his account, and was most insistent in demanding that his New York orders be promptly telephoned to New York, rather than sent by wire.

Sworn to before me this  
day of October, 1975

51a.

  
JERONIMO VILLALBA

  
Consul of the United States  
of America at London, England



COMMODITY HEDGING AGREEMENT (EXHIBIT A TO  
AFFIDAVIT OF JERONIMO VILLALBA)

COMMODITY HEDGING AGREEMENT

Stencil

000 00 0000 4162 110-21132  
MR COSTA LECOPULOS  
24 LLERIOIS  
VOURVACHT  
ATHENS  
GRECE

Date 11-11-74

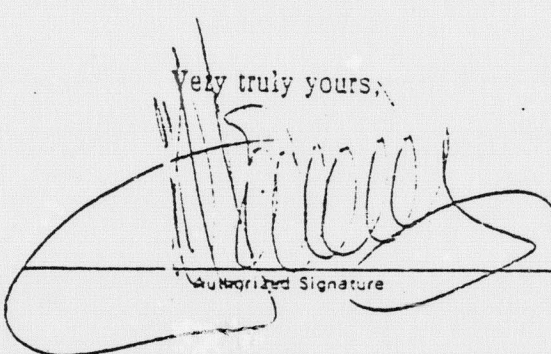
Merrill Lynch, Pierce, Fenner & Smith Inc.

Gentlemen:

We hereby confirm to you that all orders which we give you for the purchase or sale of futures contracts for the above account, will be legitimate hedges against our spot position or commitments in accordance with accepted definitions of hedge transactions.

Should we place orders for the purchase or sale of futures contracts which are not hedge transactions, we will advise you to that effect.

Very truly yours,

  
Authorized Signature

Official Position/Title



COMMODITY ACCOUNT AGREEMENT (EXHIBIT A TO  
AFFIDAVIT OF JERONIMO VILLALBA)

CODE 91R 6-67

COMMODITY ACCOUNT AGREEMENT

Merrill Lynch, Pierce, Fenner & Smith Incorporated

In consideration of your acting as broker for the undersigned, I hereby consent and agree that:  
Any and all transactions shall be subject to the constitution, rules, regulations, customs and usages of the exchange or market (and its clearing house, if any), where executed.

Any and all commodities or contracts relating thereto, now or hereafter held or carried by you for me, (either individually or jointly with others) are to be held by you as security for the payment of any liability of mine to you.

You shall have the right, whenever in your discretion you consider it necessary for your protection, or in the event that a petition in bankruptcy, or for the appointment of a receiver, is filed by or against me, or an attachment is levied against my account(s) with you, or in the event of my death, to sell any or all commodities in my account(s) (either individually or jointly with others) to buy any or all commodities which may be short in such account(s) and to close any or all outstanding contracts, all without demand for margin or additional margin, notice of sale or purchase, or other notice or advertisement, and any such sales or purchases may be made at your discretion on any exchange or other market where such business is then usually transacted, and on any such sale you may be the purchaser for your own account; it being understood that a prior demand, or call, or prior notice of the time and place of such sale or purchase shall not be considered a waiver of your right to sell or to buy without demand or notice as herein provided; and it being further understood that I shall at all times be liable for the payment of any debit balance owing in my account(s) with you upon demand, and that I shall be liable for any deficiency remaining in any such account(s) in the event of the liquidation thereof in whole or in part by you or by me.

I represent that I am more than twenty-one years of age.

All communications, whether by mail, telegraph, telephone, messenger, or otherwise, sent to me at the address as given to you from time to time shall constitute personal delivery to me.

It is agreed that any controversy between us arising out of your business or this agreement, shall be submitted to arbitration conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange, except however if the controversy involves any Security or Commodity transaction or contract relating thereto executed on an exchange located outside of the United States then such controversy, at the election of either of us, shall be submitted to arbitration conducted under the constitution and rules of such exchange (and if neither of us so elects, arbitration shall be conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange). Arbitration must be commenced within one year after the cause of action accrued by service upon the other of a written demand for arbitration or a written notice of intention to arbitrate, naming therein the arbitration tribunal. (OVER)



COMMODITY ACCOUNT AGREEMENT (EXHIBIT A TO  
AFFIDAVIT OF JERONIMO VILLALBA)

This agreement and its enforcement shall be governed by the laws of the State of New York.  
This agreement shall also inure to the benefit of your successors, by merger, consolidation or other-  
wise, and assigns, and you may transfer my account to any such successors or assigns.  
This agreement shall continue until signed notice of revocation is received by or from me, and in case  
of such revocation it shall continue effective as to transactions entered into prior thereto.

Date

10/11/74

(Signature)

COMMODITY ACCOUNT AGREEMENT

Nov 18

5 37 PM '74

116-21132

CONSTANTINOS LEKOPULOS

UNREGULATED  
REGULATED

NAME

000 CO 0000

4102

ACCOUNT NO 1132

MR COSTA LECOPULOS

24 LLIROIS

VOURVACHI

ATHENS

GRECE

(OVER)



POWER OF ATTORNEY (EXHIBIT A TO  
AFFIDAVIT OF JERONIMO VILLALBA)

POWER OF ATTORNEY - GENERAL

STENCIL AREA

000 00 0000 4162 110-21132  
MR COSTA LECOPULOS  
24 LLIROIS  
VOURVACHT  
ATHENS

TO: MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Dear Sirs:

I hereby constitute and appoint MRS KATINA LEKOPULOU  
(whose signature appears below), my agent and attorney-in-fact, with full and unlimited power and authority to act for me and in my behalf in all matters in connection with my account or accounts with you, however designated, and whether presently open or hereafter opened with the same force and effect as I myself might or could; and, without limitation of the foregoing general authority, specifically (a) to effect purchases and sales (including short sales), and to trade in stocks, bonds and any other securities, issued or unissued, foreign exchange, commodities, and contracts relating to same (including commodity "futures"), on margin or otherwise, for my account and risk; (b) to deliver to you securities for my account, and to instruct you to deliver securities from my account(s) to him or to others, and in such name and form, including his own, as he may direct; (c) to instruct you to make payment of moneys from my account(s) with you, and to receive and direct payments therefrom payable to him or to others; (d) to sell, assign, indorse and transfer any stocks, bonds or other securities of any nature, at any time standing in my name and to execute any documents necessary to effectuate the foregoing; (e) to receive statements of transactions made for my account(s); to approve and confirm the same; to receive any and all notices, calls for margin, or other demands with reference to my account(s); and to make any and all agreements with you with reference thereto for me and in my behalf.

You are accordingly authorized and empowered to follow the instructions of my said agent and attorney-in-fact in every respect concerning my account(s) with you, and I hereby ratify and confirm any and all transactions, trades or dealings effected in and for my account(s) by my said agent and attorney-in-fact, and agree to indemnify you and hold you free and harmless of any loss, liability or damage by reason of any such transaction, or by reason of any other matter or thing done by you in and for my account(s) pursuant to instructions received from him.

This power of attorney, authorization and indemnity is in addition to (and in no way limits or restricts) any and all rights which you may have under any other agreement or agreements between your firm and me, and shall inure and continue in favor of your present firm, its successors, by merger, consolidation or otherwise, and assigns.

This power of attorney and authorization shall continue in full force and effect, and you and your successors and assigns shall be indemnified in relying thereon, until you shall receive written notice of revocation thereof, signed by me; or in the event of the termination thereof by my death, or my mental incapacity, judicially determined, until you shall have received actual notice thereof, and such revocation or termination shall in no way affect the validity of this power and my liability under the indemnity herein contained, with reference to any transaction initiated by my agent and attorney-in-fact, prior to the actual receipt by you of notice of such revocation or termination, as above provided.

I have read carefully the provisions of this Power of Attorney and understand that it authorizes my agent and attorney-in-fact, herein named, to exercise all rights and powers with respect to my account with you, which I personally might exercise, and I understand that anything he may do in the exercise of such rights and powers is fully binding upon me.



POWER OF ATTORNEY (EXHIBIT A TO  
AFFIDAVIT OF JERONIMO VILLALBA)

Dated at LONDON, this 6th day of NOVEMBER, 1976.

WITNESS:

SIGNATURE  
OF  
AGENT

AGENT'S  
OCCUPATION

NAME OF  
EMPLOYER  
IF ANY

ADDRESS

RELATIONSHIP  
IF ANY, TO THE  
GRANTOR OF  
THE POWER

AGENT'S  
ACCOUNT  
NUMBER

[Signature]

CIVIL ENGINEER

X

X

DOUKISSIS PAKENTIAS, 18

WIFE

[Signature]

"Please note that the above Power of Attorney confers on your agent unlimited and unrestricted authority over the property and funds in your accounts. If restriction to purchases and sales only is desired, our Limited Power of Attorney should be used."



SUGAR 11 CONTRACT (EXHIBIT B TO  
AFFIDAVIT OF JERONIMO VILLALBA)

CONTRACT NO. 11

New York..... 19....

..... (have) (sold)  
..... (has) this day (bought)

(deliver to) and agreed to (receive from) M.....  
50 tons of 2,240 Standard American avoirdupois pounds of sound Raw Centrifugal  
Cane Sugar in bulk at ..... cents net cash U. S. currency per pound based on  
96 degrees average polarization with adjustments for other grades in accordance with  
Section 110b (3).

The sugar delivered under this contract shall have been manufactured within  
the eighteen calendar months preceding the delivery month specified below. Deliverer  
shall be responsible for all expenses pertaining to delivery and loading of sugar into  
the vessel, including freight taxes and other taxes of the country of origin of any nature.  
Normal pilotage, wharfage charges, customs fees and similar charges pertaining to  
the entry or exit of the vessel at loading port are for the account of the Receiver.  
Sugar delivered shall be free and clear of all liens and claims of any kind, which  
shall be warranted by the Deliverer to the Receiver in making the delivery. The Sugar  
delivered shall be freely available for export.

Delivery during..... to be made FOB and stowed  
(trading month)  
aboard Receiver's nominated vessel in accordance with Sugar Trade Rule 11.05.

Sugar deliverable to be as provided in Section 110b(2). Weight and polarization  
to be determined as provided in Sugar Trade Rule 11.09 and payment to be made  
in accordance with Sugar Trade Rule 11.10.

Either party may call for margin as the variations of the market for like deliveries  
may warrant, which margin shall be kept good.

This contract is made in view of, and in all respects subject to, the By-Laws,  
Rules and Regulations of the New York Coffee and Sugar Exchange, Inc.

.....  
(Brokers)

(Across the face is the following)

For and in consideration of one dollar to .....  
in hand paid, receipt whereof is hereby acknowledged, .....  
accept this contract with all its obligations and conditions.



SUGAR 10 CONTRACT (EXHIBIT C TO  
AFFIDAVIT OF JERONIMO VILLALBA)

(4)

CONTRACT NO. 10

New York..... 19....  
..... (has) this day (sold)  
..... (have) (bought)

and agreed to (deliver to)  
(receive from).....

50 tons of 2,240 pounds each of Raw Centrifugal Cane Sugar, in bulk, of any grade or grades and qualities as specified in Section 109a at the price of ..... cents per pound net cash duty paid or duty free. Such price to be for 96° average polarization outturn, and Standard Quality Range, with additions or deductions for other grades and qualities according to the differentials established or to be established for the delivery month stated below by the Rules of the New York Coffee and Sugar Exchange, Inc., adopted or to be adopted in accordance with the provisions of Section 109a of the By-Laws of said Exchange.

Deliverer shall deliver and Receiver shall receive the Sugar in a vessel berthed at a customary Refiner's Berth in New York or Philadelphia. The port and berth shall be declared by Receiver, who shall discharge the Sugar as customary at said berth at his own expense in accordance with Sugar Trade Rule 10.13. The vessel, which shall be declared by Deliverer, (a) shall be available for discharge at New York and/or Philadelphia and (b) shall be ready and be able to commence discharge during the month of ..... Receiver shall not be obliged to discharge the vessel prior to the first regular stevedoring day of said month and the vessel shall arrive in accordance with Section 109a.

So long as Sugar may be processed or consumed only under any quota or allotment plan decreed by any United States Government Department or Agency only Sugar permitted to be so processed or consumed without penalty on the date of delivery under this contract may be delivered in fulfillment thereof. The Receiver guarantees that all Sugar delivered hereunder shall be subject to such specific processes as shall, following its entry into the continental United States, be required for its classification as Raw Sugar under any plan decreed by any United States Government Department or Agency.

Weight and quality to be determined as provided in Sugar Trade Rules 10.13 and 10.19 and delivery and payment to be made in accordance with Sugar Trade Rule 10.11.

Allowance for delivery to be determined in accordance with Section 109a.

Either party may call for margin as the variations of the market for like deliveries may warrant, which margin shall be kept good.

This contract is made in view of, and in all respects subject to the By-Laws, Rules and Regulations of the New York Coffee and Sugar Exchange, Inc.

.....  
(Brokers)

(Written across the face is the following)

For and in consideration of One Dollar to ..... in hand paid, receipt whereof is hereby acknowledged, ..... accept this contract with all its stipulations and conditions.



NEW ACCOUNT FORM (EXHIBIT D TO  
AFFIDAVIT OF JERONIMO VILLALBA)

NEW ACCOUNT INFORMATION IN  
COMMODITY SPECULATIVE ACCOUNTS

STENCIL HERE 110-21132

620 00 0000 4162 110-21132  
MR COSTA LECOPULOS  
24 LLIROIS  
VOURVACHIE  
ATHENS  
GREECE

ACCOUNT ITEM ONLY	Cmdy. Acct. No.	Date Cmdy. Acct. Opened	Business Phone	Residence Phone	Taxpayer Ident. No.	Soc. Sec. Corp. Ident.	Passbook	Alien Reg. No.
CODE 20	110-21132	5/11/74	922 229 6	692 158 3				
CODE 94								
CODE 088								
CODE 117								
CHARTER								
EMPLOYER LTR								

NEW CLIENT: Yes ☒ No ☐ Married ☒ Single ☐ No. of Dependents 1 GIRL

IS CLIENT OVER 21 YEARS OF AGE: Yes ☒ No ☐

HOW LONG HAVE YOU KNOWN CLIENT 2 WEEKS

OF WHAT COUNTRY IS CLIENT A CITIZEN GREECE

SOURCE OF ACCOUNT: Direct Mail Lead ☐ Advertising Lead ☐ Forum Lead ☐ Personal Call ☐ Other REFERRAL FROM A ALEXION

BUSINESS STRUCTURE (If Applicable)  
SOLE PROPRIETORSHIP  
PARTNERSHIP  
CORPORATION

NA 13-NA  
N/A CLERK STAMP

Client Name CONSTANTINOS LEKOPULOS

Address 24, KALLIROIS STREET, MAKRYANNI - ATHENS, GREECE

Address DUKISSIS PLAKENTAS, 18/20, AMPELOKLIPI, ATHENS.

Employed By FRYLLA NAVIERA CIA. S.A. Address 24 KALLIROIS STREET, ATHENS

Nature of Business SHIPPING Position Held OWNER

Has Client Ever Done Business With Another Broker Yes ☒ No ☐

Name of Broker BACHE INC. IN GENEVA

Has Client Done Commodity Business With Another MLPSUS Office Yes ☐ No ☒

Current Stock And Commodity Equity At Other Broker 1,500,000

Office At \_\_\_\_\_

PREVIOUS COMMOD. ACCT. NO. \_\_\_\_\_



NEW ACCOUNT FORM (EXHIBIT D TO  
AFFIDAVIT OF JERONIMO VILLALBA)

Power of Attorney  
Whose Favor MRS KATINA LEKPOULOU Relationship To Customer WIFE  
(FULL NAME AND COMDY ACCT NO IF ANY)

ated Comd. Accts.  
None - State None) \_\_\_\_\_ And Other Comments \_\_\_\_\_

Reference And Branch Location DISCOUNT BANK, SEWYIA  
BANK OF ATRICA, PIRAEUS, GREECE 4162-7420  
TO BE COMPLETED ON ALL SPECULATIVE ACCOUNTS BY OFFICE MANAGER. EVERY QUESTION MUST BE ANSWERED  
SIGNATURE OF ACCOUNT  
EXECUTIVE OPENING ACCOUNT

ent Experienced in Futures Speculation YES Estimate of Customer's ANNUAL INCOME \$ 1200,000

ated NET WORTH (Exclusive of Equity in Home) \$ 3,000,000

ent Equity in Client's Merrill Lynch Security Accts. \$ \_\_\_\_\_ and M.L. Comd. Accts. \$ \_\_\_\_\_

it's Merrill Lynch Security Account Numbers 10-21133

ated Risk Capital Available For Commodity Trading \$ 600,000 How Did You Determine Customer's Financial Position  
BASED ON ATRICA IN PIRAEUS

ated DOLLAR TRADING LIMIT (Maximum Margin Requirements At Any One Time) Based On Your Estimate Of Client's Financial Situation and  
erament \$ 600,000 (Subject to Periodic Review). Have You Advised A/E Accordingly YES

ou Satisfied That This Customer is a Desirable Speculative Commodity Account YES

Anyone Discussed Risk of Commodity Trading With Customer YES If So, Who JERRY VILLALBA

DATE 11/70 Jerry Villalba  
(Office Manager)

REVIEWED BY  
(Commodity Division)

ACCEPTED BY  
(Commodity Division)

NEW ACCOUNTS COPY N.Y. #1



REPLY AFFIDAVIT OF CONSTANTINOS LECOPOULOS  
SERIAL NUMBER 59517

A F F I D A V I T

.... In the city of Athens, on this Tuesday, the fourth day  
.... of November (1975) one thousand nine-hundred and seventy five,  
in my office, located at 7 Voullis street, the office being the  
property of Kalypso Bolani and Maglialene Alexiou, in the presence  
.... of myself, Eleftheriou Konstantaraki, Notary Public, and resident  
.... of Athens, Greece, appeared Constantinos Lekopoulos, known to me  
and not challengeable, son of Antonios and Froso, born in 1928,  
in Athens, Greece, Civil Engineer, residing at 18 Leoforos  
Kifissias avenue, Athens and presently as he stated is now  
domiciled at Doukissis Plakentias 18) possessing Identity  
Card No A-322279/1963 DI issued by the ID Branch Office of  
Security Forces of Athens, Greek subject, Christian Orthodox  
who stated that he can write and read and that he does not  
desire the presence of a second notary or that of witnesses  
for composing and signing the present. He then asked me to  
state under oath the following: I asked him to put his right  
hand on the Holy Bible and while doing so he pronounced before  
me the following oath: "I Swear before God, to tell conscientiously  
the whole truth and nothing but the truth, without adding or  
concealing anything and I confirm that never the representa-  
tives of the firm MERRYL LYNCH & CO explained to me in the  
French language the text of the signed agreement dated Novem-  
ber 1974 this claim being rather strange in view of the fact  
that my knowledge of the French language (and the three words  
are stricken off) <sup>is</sup> elementary and as of this their explanation  
would be completely useless."



He further stated that the present is to be used before any Court or Official Authority according to Law.

In order to confirm the above this document has  
been composed (one copy as well)

for which the amount of 135.00 drachmas has been collected  
for legal stamps and fees which amount to (95) ninety  
drachmas.....

and which document having been understandably read so that the person sworn can hear, and having been confirmed he was signed by him and by me legally.

Const. Lekopoulos

The Public Notary

(T.S.) Eleftherios A. Konstantarakis

True copy - Athens on same day

Athens Notary Public

Signature illegible

SEEN by the Court of First  
Instance of Athens

~~LEGALIZATION~~ by the Ministry  
of Justice in Athens/Greece.

- I. ION M. POLLATOS, Official Translator  
 of the Ministry of Foreign Affairs, do hereby  
 certify that the foregoing is a verbatim  
 translation of the original script made out in

ek language. - 5 NOV. 1975

witness my hand, this

in Athens/Greece

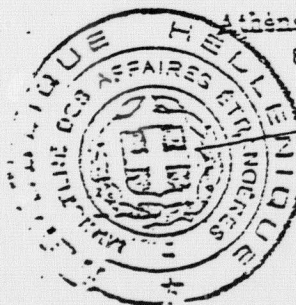
REPUBLIQUE HELLENIQUE  
MINISTERE DES AFFAIRES ETRANGERES

Vu pour légalisation de la signature ci-dessus  
du Traducteur du Ministère des Affaires  
Etrangères ayant traduit le texte ci-dessus.

13 NOV. 1975

12 June 1964

FOR DELETION OF NAME  
LE DIRECTOR



62a.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MERRILL LYNCH, PIERCE, FENNER &  
SMITH INCORPORATED,

Plaintiff,

-against-

COSTA LECOPULOS, a/k/a CONSTANTINOS  
LEKOPOULOS.

Defendant.

75 Civ. 1622  
(JMC)

## MEMORANDUM DECISION AND ORDER

CANNELLA, D.J.:

Defendant's motion to dismiss for lack of personal jurisdiction is hereby granted and the complaint dismissed. This Court agrees with the analysis in Merrill Lynch, Pierce, Fenner & Smith Incorporated v. Alexiou, 75 Civ. 828 (S.D.N.Y., filed July 14, 1975) (Knapp, J.) on almost identical facts. See Haar v. Armendoris Corp., 31 N.Y.2d 1040, 294 N.E.2d 855, 342 N.Y.S.<sup>2d</sup> 70 (1973); Delbello v. Japanese Steakhouse, Inc., 43 App.Div.2d 455, 352 N.Y.S.2d 537 (4th Dept. 1974), which hold that under New York's "long-arm" statute - CPLR § 302(a)(1) - an agent's own activities in New York on behalf of his principal may not, in a suit by the agent against the principal, be attributed

MEMORANDUM DECISION AND ORDER APPEALED FROM

to the principal so as to become acts of the principal within New York for jurisdictional purposes. See also, Helfer Commodities Corp. v. Pellegrino, 390 F.Supp. 521 (S.D.N.Y. 1971) (Brieant, J.). Plaintiff's claim that defendant's agreement to arbitrate operates as a consent to personal jurisdiction in New York for purposes of a suit on the underlying contract is likewise rejected.

Accordingly, plaintiff's complaint against the defendant is hereby dismissed.

SO ORDERED.

JOHN M. CANNELLA

---

JOHN M. CANNELLA  
United States District Judge

Dated: New York, N.Y.  
June 7, 1976.